

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1270. Pertaining to Atlantic Menhaden (amending 4VAC20-1270-10, 4VAC20-1270-20, 4VAC20-1270-30, 4VAC20-1270-40, 4VAC20-1270-50, 4VAC20-1270-60; adding 4VAC20-1270-35).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: May 1, 2020.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments transfer the management authority of Atlantic menhaden from the Virginia General Assembly to the Virginia Marine Resources Commission to comply with the Atlantic States Marine Fisheries Commission Atlantic Menhaden Fishery Management Plan to avoid a statewide moratorium of the fishery. The provisions include (i) allocation, accountability, overages, restrictions, closures, and state-to-state transfers for landing quotas and (ii) entry criteria, individual transferable quota systems, seasons, and reporting requirements for different sectors of the fishery.

4VAC20-1270-10. Purpose.

The purpose of this chapter is to ~~comply with the Interstate Fishery Management Plan for Atlantic menhaden~~ establish management measures for a sustainable Atlantic menhaden fishery and to provide fair and equitable allocation to the sectors.

4VAC20-1270-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise:

"Atlantic menhaden" or "menhaden" means any fish of the species Brevoortia tyrannus.

"Bay Cap" means the annual total allowable commercial landings by volume (pounds or metric tons) from the Chesapeake Bay by the purse seine menhaden reduction sector.

"Chesapeake Bay" means the territorial waters of Virginia lying west of the Chesapeake Bay Bridge-Tunnel.

~~"Nonpurse"~~ "Non-purse" seine menhaden bait sector" means those vessels that do not utilize a purse seine net to harvest menhaden and land menhaden only for use as bait in other fisheries.

"Purse seine menhaden bait sector" means those vessels that utilize a purse seine net to land menhaden only for use as bait in other fisheries.

"Purse seine menhaden reduction sector" means those vessels that utilize a purse seine net to land menhaden only at a qualified menhaden processing factory as described by § 28.2-400.3 of the Code of Virginia.

"Qualified menhaden processing factory" means a facility located in Virginia that has processed at least 100,000 metric tons of menhaden in each of the years 2009, 2010, and 2011.

"Stationary multi-species gear" means pound nets, anchored or staked gill nets, fishing weirs, floating fish traps, and fyke nets.

4VAC20-1270-30. Total allowable landings for menhaden; allocation, accountability, and overages, restrictions, closures, and state-to-state transfers.

A. ~~In accordance with § 28.2-400.2 of the Code of Virginia the total~~ Total allowable commercial landings for menhaden in 2017 and 2018 in metric tons 2020 shall be equivalent to 372,443,990 pounds, and that total amount of allowable landings shall be allocated as quotas among three sectors of the menhaden fishery, as described below, pursuant to § 28.2-400.3 of the Code of Virginia. The purse seine menhaden reduction sector is allocated a quota of 335,359,214 pounds of allowable menhaden landings; the purse seine menhaden bait sector a 31,204,766 pound quota of allowable menhaden landings; and the nonpurse seine menhaden bait sector a 5,880,010 pound quota of allowable menhaden landings (168,937.75 metric tons) or 78.66% of the annual total allowable catch (TAC) set by the Atlantic States Marine Fisheries Commission.

B. Total amount of allowable commercial landings in subsection A of this section shall be allocated as quotas among three sectors of the menhaden fishery in proportion to each sector's share of average landings from 2002 through 2011, as described in subdivisions 1, 2, and 3 of this subsection.

1. The purse seine menhaden reduction sector shall be allocated a quota of 335,348,569 pounds or 90.04% of allowable commercial menhaden landings.

2. The purse seine menhaden bait sector shall be allocated a quota of 31,210,806 pounds or 8.38% of allowable commercial menhaden landings.

3. The non-purse seine menhaden bait sector shall be allocated a quota of 5,884,615 pounds or 1.58% of allowable commercial menhaden landings.

C. If the total allowable commercial landings specified in subsection A of this section are exceeded in any calendar year, the total allowable commercial landings for the subsequent calendar year ~~will~~ shall be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in subsection ~~A~~ B of this section, with the exception of the non-purse seine menhaden bait sector, which shall move into the incidental catch provision outlined in subdivision F 3 of this section.

D. Any portion of the 1.0% of the coastwide total allowable catch set aside by the Atlantic States Marine Fisheries Commission for episodic events that is unused as of September 1 of any calendar year shall be returned to Virginia and other states according to allocation guidelines established by the Atlantic States Marine Fisheries Commission. Any such return of this portion of the coastwide total allowable catch to Virginia shall increase the total allowable commercial landings for that year.

E. It shall be unlawful for any person to take or catch menhaden using a purse seine net except in accordance with the seasons, areas, and gear restrictions as set forth in §§ 28.2-409 and 28.2-410 of the Code of Virginia.

F. It shall be unlawful to harvest or land in Virginia any menhaden after the commissioner projects and announces that 100% of the total allowable landings for any sector has been taken. The commissioner may reopen a fishery sector if, after all reports as described in 4VAC20-1270-

60 have been received, the portion of the total allowable catch has not been harvested by that sector.

1. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden reduction sector is projected to be taken.

2. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden bait sector is projected to be taken.

3. The commissioner shall announce the date of closure when the total allowable commercial landings for the non-purse seine menhaden bait sector is projected to be taken. Once this closure is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per calendar day as bycatch. Any two persons licensed in the non-purse seine menhaden bait sector may possess and land up to 12,000 pounds of menhaden bycatch when working together from the same vessel using stationary multi-species gear per the Atlantic States Marine Fisheries Commission incidental catch provision.

G. The commissioner may request a transfer of menhaden quota from any other state that is a member of the Atlantic States Marine Fisheries Commission. If Virginia receives a transfer of menhaden quota in any calendar year from another state, the total allowable catch for that calendar year shall increase by the amount of transferred quota. It shall be unlawful for this quota transfer to be applied to the Bay Cap quota as described in 4VAC20-1270-35. The commissioner may transfer menhaden quota to another state only if there is unused menhaden quota.

4VAC20-1270-35. Chesapeake Bay purse seine menhaden reduction fishery.

A. The annual total allowable Bay Cap landings from the Chesapeake Bay by the purse seine menhaden reduction sector in 2020 shall not exceed 36,196 metric tons (79,798,520 pounds) and shall be subject to annual adjustment for any overages as specified in subdivision 3 of this subsection.

1. It shall be unlawful for any transfers of quota from other states to be applied to the Bay Cap to reduce any overages.

2. It shall be unlawful for any amount of unlanded menhaden quota under the Bay Cap each calendar year to be rolled over or applied as credit for any subsequent calendar years.

3. Any annual menhaden landings in excess of the current calendar year Bay Cap shall be deducted from only the subsequent calendar year Bay Cap.

B. When it is projected that the purse seine menhaden reduction sector has met the annual menhaden Bay Cap in the Chesapeake Bay, based on mandatory daily landings reports, the commissioner shall promptly notify the industry announcing the date of closure.

C. It shall be unlawful for any person to harvest menhaden by purse seine for reduction purposes from the Chesapeake Bay for the remainder of that calendar year after the commissioner has announced the date of closure.

4VAC20-1270-40. Purse seine menhaden bait sector; limited entry criteria; individual transferable quota system; and season.

A. To qualify for limited entry to the purse seine menhaden bait sector, the ~~applicant must~~ person shall:

1. Have held a purse seine license in 2011 and landed menhaden in Virginia in 2009, 2010, and 2011, while using purse seine gear to harvest menhaden in one of those three years; and

2. Provide the commission receipts and landings reports or other requested reports as proof of landings and gear usage to demonstrate that the criteria described in subdivision 1 of this subsection have been met.

B. The commission shall establish an individual transferable quota (ITQ) system for each purse seine menhaden bait licensee ~~that who~~ who meets the limited entry requirements in subsection A of this section. The quota for this sector will be allocated according to each qualified licensee's rounded percentage share of the average of the 2007 through 2011 menhaden landings.

C. Each licensee qualified under the ITQ system may transfer quota to another licensee's ITQ upon approval of the commissioner.

D. The season for vessels with a gross weight of less than 70 tons that use purse seine nets to take or catch menhaden for purposes other than use as fish meal or oil shall be from the first Monday in March up to, but not including, the first Monday in May.

4VAC20-1270-50. ~~Nonpurse~~ Non-purse seine menhaden bait sector quota; allocation and bycatch provisions.

~~A. The commercial nonpurse non-purse~~ non-purse seine menhaden bait sector's quota allocation shall be by gear type in proportion to share for each gear type of average landings from 2002 through 2011 and are as follows:

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|---|--|
| 1. Cast net: | 2,261 <u>0.04%</u> or 2,354 pounds. |
| 2. Dredge: | 3,595 <u>0.06%</u> or 3,531 pounds. |
| 3. Fyke net: | 2,477 <u>0.04%</u> or 2,354 pounds. |
| 4. Gill net: | 1,781,986 <u>30.31%</u> or 1,783,627 pounds. |
| 5. Pound net: | 3,997,201 <u>67.98%</u> or 4,000,361 pounds. |
| 6. Seine <u>Haul seine</u> : | 23,550 <u>0.4%</u> or 23,538 pounds. |
| 7. Trawl: | 68,940 <u>1.17%</u> or 68,850 pounds. |

~~B. Pursuant to § 28.2-400.4 of the Code of Virginia, once the commissioner announces the date of closure for the nonpurse seine bait fishery, any person licensed in the nonpurse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day.~~

4VAC20-1270-60. Reporting requirements by menhaden fishery sector.

A. Each licensee of any purse seine vessel ~~that who~~ who harvests menhaden ~~must submit~~ shall complete a Captain's Daily Fishing Report ~~to the commission~~ on each ~~nonweekend~~ non-weekend or ~~nonholiday~~ non-holiday day that either purse seine sector is open for harvest. The Captain's Daily Fishing Report is produced by the National Marine Fisheries Service and provides preliminary estimates of harvest. Pursuant to § 28.2-204 of the Code of Virginia, those same licensees ~~must~~ shall submit to the commission ~~actual~~ the Captain's Daily Fishing Reports in addition to summarized weekly harvest reports that include vessel name and exact weight of menhaden landed, in pounds, by Wednesday of the following week. ~~Once 97% of either purse seine sector's quota is projected and announced to have been met, each licensee of that purse seine sector must provide daily harvest totals to the commission's Interactive Voice Recording System.~~

1. Any menhaden landed by a limited entry purse seine menhaden bait licensee at a qualified menhaden processing factory, as indicated on the mandatory daily landings reports, shall be attributed to the purse seine menhaden reduction sector quota.

2. Once 97% of either purse seine sector's quota is projected and announced to have been taken, each licensee of that purse seine sector shall provide daily harvest totals to the commission's Interactive Voice Recording System.

B. The ~~nonpurse~~ non-purse seine menhaden ~~commercial~~ bait sector shall submit daily reports according to the schedule and reporting requirements established by ~~4VAC20-610-10, Pertaining to Commercial Fishing and Mandatory Harvest Reporting~~ 4VAC20-610.

~~C. When the commissioner announces that 90% of the nonpurse seine menhaden bait quota has been reached, each harvester of this sector is required to report his previous 10 days of landings to the commission's Interactive Voice Recording System and must continue to report his additional landings every 10 days until it is announced that the nonpurse seine bait quota has been attained. More frequent reporting is permissible. The commission may also implement other harvest conservation measures such as trip limits.~~

VA.R. Doc. No. R20-6362; Filed April 28, 2020, 11:20 a.m.